

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/694,797	10/20/2000	E. Castedo Ellerman	TEL-00-003-1P	1588	
24488	7590 10/12/2005		EXAMINER		
BEVER, HOFFMAN & HARMS, LLP			LUU, LE HIEN		
1432 CONCA BLDG G	1432 CONCANNON BLVD BLDG G		ART UNIT	PAPER NUMBER	
LIVERMORE	, CA 94550-6006		2141	-	
			DATE MAILED: 10/12/2003	DATE MAILED: 10/12/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
Office Action Summany	09/694,797	ELLERMAN ET AL.				
Office Action Summary	Examiner	Art Unit				
TI- MAII NO DATE All :	Le H. Luu	2141				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
 Responsive to communication(s) filed on 06/23/05-07/28/05. This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. 						
Disposition of Claims						
 4) Claim(s) 1-17 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 1-17 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. 						
Application Papers						
9) ☐ The specification is objected to by the Examiner 10) ☑ The drawing(s) filed on 20 October 2000 is/are: Applicant may not request that any objection to the or Replacement drawing sheet(s) including the correction 11) ☐ The oath or declaration is objected to by the Examiner	a)⊠ accepted or b)⊡ objected drawing(s) be held in abeyance. See on is required if the drawing(s) is obj	ected to. See 37 CFR 1.121(d).				
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachment(s)						
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10/20/00-01/25/05. 	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal Pa					

1. This application is in condition for allowance except for the following formal matters:

- a. Applicant is requested to file a Terminal Disclaimer to overcome the nonstatutory double patenting rejection as described below.
- Applicant is requested to amend the specification to overcome the objection as described below.

A shortened statutory period for reply to this action is set to expire TWO MONTHS from the mailing date of this letter.

- 2. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
- 3. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

- 4. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
- 5. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 09/592,321. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the cited claims of the U.S. patent applications.
- 6. This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.
- 7. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Application/Control Number: 09/694,797

Art Unit: 2141

Page 4

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LE HIEN LUU PRIMARY EXAMINER